

CITY OF MINNEAPOLIS

# RESPONSIBLE CONTRACTOR LAW

# What contracts are subject to the responsible contractor law?

- Construction projects
- In excess of \$50,000
- Financed or owned by a public contracting authority including:
  - University of Minnesota
  - Minnesota State Colleges and Universities
  - Metropolitan Council
  - Metropolitan Airports Commission



# What contracts are subject to the responsible contractor law?

## 4. Municipalities including the following:

- Cities
- Towns
- Counties
- School Districts
- HRAs, EDAs, Port Authorities
- Minnesota Sports Facilities Authority
- Joint Powers entities
- Special Districts
- Drainage Authorities
- Watershed District
- Destination Medical Center Corporation (Rochester)
- Any other municipal corporation or political subdivision that is authorized to enter into contracts.



# What is a construction project?

- Any project that involves the construction, alteration, remodeling, repair or demolition of buildings, highways, roads, bridges, or real property
- Real property improvements is broad and includes, but is not limited to, parking, parks, sports facilities, theaters, wharves or docks, drainage ditches, etc.
- The construction project must be awarded by competitive bidding or the best value process as described in Minnesota Statutes, Section 471.345



# Is a funding agreement between a municipality and a developer subject to the law?

- Not likely as the municipality is entering into a loan or other agreement with the developer to provide a source of financing
- The actual “construction contract” is between the developer and a contractor



# Who is a “responsible contractor?”

Any contractor, subcontractor or motor carrier that meets the following “minimum criteria”:

- In compliance with workers’ compensation and unemployment insurance requirements
- In compliance with the Department of Revenue registration requirements
- In compliance with the Department of Employment and Economic Development registration requirements
- Has filed a certificate of authority to transact business in the State of Minnesota with the Secretary of State if it is domiciled in another state or country



Contractor must also verify during the three-year period before submitting its bid or response that it had not violated any of the following laws:

- Minimum wage law (Minnesota Statutes, Section 177.24)
- Overtime wage law (Minnesota Statutes, Section 177.25)
- For State of Minnesota projects, prevailing wage and maximum working hours (Minnesota Statutes, Sections 177.41-177.44)
- Prompt payment of wages upon discharge of an employee (Minnesota Statutes, Section 181.13)
- Prompt payment of wages to employees who quit or resign (Minnesota Statutes, Section 181.14)
- Misrepresentation of the employment relationship such as classifying as an independent contractor or causing a worker to sign a document misclassifying the status of the worker (Minnesota Statutes, Section 181.722)
- For federally financed projects, compliance with the minimum wage and maximum hours of the Fair Labor Standards Act (29 U.S.C. Sections 201-209)

# How are these violations measured over the three-year period?

- Two or more separate and distinct instances of failure to pay required wages and any penalties assessed under statutes where the total underpayments equal at least \$25,000
- Has been issued a final order to comply by the State Commissioner of Labor and Industry
- Has been issued at least two determination letters by the Department of Transportation finding an underpayment of wages by the contractor to its own employees
- Has been found by the State Commissioner of Labor and Industry to have repeatedly or willfully violated any statutes over which the Commissioner has authority to enforce





# How are these violations measured over the three-year period?

- Has received a ruling or findings of underpayment by Wage and Hour Division of the U.S. Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Law Board
- Has been found liable in court of underpaying wages and non-payment of penalties or of having misrepresented that a construction worker is an independent contractor
- Has not violated the State Building Code by having been issued a final administrative or licensing order by the Commissioner of Labor and Industry (Minnesota Statutes, Chapter 363B)
- Has not more than twice had a certificate of compliance for an affirmative action plan revoked or suspended by the Commissioner of Human Rights (Minnesota Statutes, Section 363A.36) and had the revocation or suspension upheld by the Office of Administrative Hearings or the final order of the Commissioner is not appealed



# How are these violations measured over the three-year period?

- Has not received a final determination assessing a monetary sanction from either the State Department of Administration or Department of Transportation due to failure to satisfy:
  - Targeted group business goals
  - Disadvantaged business enterprise goals
  - Veteran-owned business goals
  - Lack of good faith effort more than twice



# How are these violations measured over the three-year period?

- Is not currently suspended or debarred by the federal government, the State of Minnesota or any of the State's departments, commissions, agencies or political subdivisions that have debarment authority-
- Has not proposed to include as part of the bid or response to a call for bids or responses, any subcontractor or motor carrier that has not verified that it has also been a responsible contractor during the previous three years



# When does the three year period for measuring violations begin?

- For the four “minimum criteria” (workers’ comp and unemployment insurance, registration with the Department of Revenue and Department of Employment and Economic Development and for non-Minnesota contractors or sub-contractors that have to register with the Secretary of State) as of January 1, 2015
- For the other criteria, the measurement period began on July 1, 2014 and any previous violations are not counted



# Do counties, cities and towns have to enforce who is a responsible contractor?

- Other than obtaining an affidavit or verification from the contractor, no
- However, since the law includes the provision that includes the debarment or suspension of a contractor by federal, state or local governmental entities, the monitoring of hours and wages by the State Department of Labor and Industry, the licensing of contractors and subcontractors by other agencies and departments of the State of Minnesota, if another party challenges the content of a contractor's, subcontractors or motor carrier's verification of compliance, the municipality is obligated to conduct an investigation to determine whether or not the allegations of the third party are true



# Who is likely to challenge the contents or statements contained in a contractor or subcontractor's verification of compliance?

- Another contractor or subcontractor that was not awarded a contract through the competitive bid process.
- Labor organizations that are aware of members that have had payment issues with contractors or subcontractors.



Can a contractor evade this law by creating affiliated or replacement legal entities such as a new corporation or limited liability company?

- The law attempts to address this possibility by making it applicable to related entities such as affiliates under the control of a contractor such as parent and subsidiaries, companies where an individual who was part of a previous “irresponsible contracting firm” is a part of the ownership interest of the new firm
- The City will review Secretary of State filings for businesses if a third party alleges that a firm has directors or officers who were members of a previous firm that is now subject to violations of the responsible contractor law



Does the prime contractor have to submit verification certificates from its intended subcontractors and motor carriers at the time it submits its bid?

- No, but the contractor is obligated to submit the subcontractors' affidavits if requested by the city prior to the award or signing of the contract for the construction project
- Each subcontractor must prepare a verification of compliance certificate and provide it to the prime or general contractor. (Section 16C.285, subd. 5)
- The prime or general contractor is obligated to submit the subcontractors' verification of compliance affidavits if requested by the city prior to the award or signing of the contract for the construction project. (Section 16C.285, subd. 5)



# Are the verifications for motor carriers the same as for subcontractors?

- No motor carriers must annually provide to each contractor or subcontractor or that the motor carrier contracts with a signed verification statement that the motor carrier complies with the section 16C.285, subd. 3 “minimum criteria”. (Section 16C.285, subd. 5a)
- Motor carriers include a business or individual that provides for-hire transportation of materials, equipment or supplies for construction project. (Section 16C.285, subd. 1 and 5a)

